

WATERSTONE CONDITIONS OF APPROVAL

Statement of Intent Applicable Generally to Master Plan

The Town of Hillsborough (“Town”) encourages development that enhances the general welfare of the Town’s citizens. Therefore, to the extent not specifically addressed in the Waterstone Mater Plan, or otherwise required by the Town Zoning Ordinance to be addressed as part of the Special Use Permit process, the developer of the Waterstone project, its successors and assigns, shall explain specifically the manner in which the design for improvements on each Parcel addresses the following issues at the time that applications for Special Use Permits are submitted to the Town for each Parcel depicted on the Waterstone Master Plan: (1) site lighting; (2) appropriate noise mitigation; (3) the need to accommodate public transportation; (4) the location of parking; (5) emergency vehicle access to the site; (6) buffering between different land uses; and (7) building design for land uses on the site.

General Conditions Applicable to the Entire Project

1. Vested Right. A vested right pursuant to G.S. 160A-385.1 and Section 23 of the Zoning Ordinance of the Town of Hillsborough is established as of the date hereof. The vested right arising from the approval of the Waterstone Master Plan shall be valid through March 8, 2011, unless such date formally is extended by the Town Board prior to its expiration. Notwithstanding the foregoing, should the developer, its successors or assigns: (a) fail to commence any work on any portion of the property subject to the Waterstone Master Plan within 24 months of this approval; or (b) if the Water and Sewer Agreement referred to herein is terminated before all phases of the Waterstone Master Plan have been completed, then the vested right established herein shall, in the sole discretion of the Town’s Board of Commissioners, terminate upon ten (10) days written notice to the developer formally exercised by a vote taken at a publicly noticed regular or special meeting of the Board.
2. Informal Concept Plan Submission. The developer shall submit to the Town a concept plan for informal review by the Planning Board prior to submitting a formal application for a Special Use Permit for any Parcel shown on the Waterstone Master Plan.
3. Affordable Housing. Parcel 3, as shown on the Waterstone Master Plan, shall be approved and developed as two separate, but contiguous pods. These two separate pods shall be referenced as Parcel 3A and Parcel 3B. The specific boundaries and acreage for the first of these Parcels shall be determined by the developer when Special Use Permits are approved for these two separate pods, and the two separate Parcels shall be subdivided pursuant to the Town’s Subdivision Ordinance at that time. Although Parcel 3A and 3B shall be two separate parcels, the developer shall design Parcel 3 so that both Parcel 3A and Parcel 3B work together as a single community. These two separate pods shall be developed as follows:

Parcel 3A: The developer shall be entitled to build a maximum of 104 dwelling units on Parcel 3A. These units shall be market-rate residences, and may consist of townhomes with or without garages, and/or patio homes.

Parcel 3B After the subdivision of Parcel 3, Parcel 3B shall be deeded to the Orange Community Housing and Land Trust or its assignee ("OCHLT"), for development, following approval of a Special Use Permit for this Parcel. Provided that it otherwise complies with the terms of the Town ordinances in effect at the time, and with the terms of the Waterstone Master Plan, including these Conditions of Approval, OCHLT shall be entitled to build 24 townhomes that shall be marketed by OCHLT at a price that is affordable for Qualified Buyers. Qualified Buyers shall be defined as individuals or families with gross incomes not less than 60% and not more than 80% of the median family income for the Metropolitan Statistical Area ("MSA") in which the Town is located, as determined by statistics provided by the U.S. Department of Housing and Urban Development ("HUD") as of January 1 of the year in which a dwelling unit located on Parcel 3B is purchased.

That OCHLT shall establish mechanisms to guarantee that the 24 affordable townhomes shall be permanently affordable and available to Qualified Buyers.

That OCHLT shall record in the Orange County Registry covenants prohibiting the owners of any of the affordable housing units located on Parcel 3B from renting these units to other persons.

The developer of Parcel 3A shall be responsible for submitting and obtaining approval of a Special Use Permit for Parcel 3B at no cost to OCHLT. The Town hereby waives any applicable Town development review and permit fees (excluding public utility capital facilities fees) that otherwise would be required to be paid in connection with the development of Parcel 3B pursuant to the Waterstone Master Plan. This waiver shall not apply if the Waterstone Master Plan is terminated or otherwise altered with respect to Parcel 3B.

The developer of Parcel 3A shall also be responsible for: (1) providing vehicular and pedestrian access to Parcel 3B; (2) providing any necessary cross-access easement agreements necessary for access to Parcel 3B; and (3) insuring that all public utilities are available to Parcel 3B.

OCHLT shall submit architectural renderings to the developer of Parcel 3A for review and approval prior to the start of construction for dwelling units on Parcel 3B.

The deed to Parcel 3B shall be conveyed by the developer to OCHLT prior to the issuance of a Certificate of Occupancy for any of the dwelling units in Parcel 3A.

The approval of a Special Use Permit to develop 24 affordable townhomes on Parcel 3B and the subsequent dedication of Parcel 3B to the OCHLT or its assignee, shall hereby fulfill all present and future obligations regarding the provision of affordable housing on any property subject to the Waterstone Master Plan. No other developer of any other property subject to the Waterstone Master Plan shall be required to provide or address the propriety of affordable housing on that property.

The developer shall provide OCHLT \$5,000.00 for each of the Twenty Four (24) units (for a total of \$120,000) at the time of issuance of a building permit for each unit as a contribution towards the cost of construction.

Nothing contained in this Condition of Approval 3, nor any failure on the part of OCHLT to comply with any applicable provision of the Waterstone Master Plan or these Conditions of Approval, shall impair or prohibit any developer of property subject to the Waterstone Master Plan from proceeding with development of property other than Parcel 3B or obtaining all necessary permits and approvals from the Town for the construction and occupancy of such development.

4. Compliance with Zoning Ordinance. The Waterstone Master Plan was submitted to the Town in compliance with the requirements of Section 2.17 of the Town of Hillsborough's Zoning Ordinance. Prior to development of any specific Parcel shown on the Waterstone Master Plan, a Special Use Permit Application for that Parcel shown on the Waterstone Master Plan will be submitted to the Town in accordance with the applicable provisions of the Town Zoning Ordinance in effect at the time the application is made; provided, however, that in the event that there are inconsistencies between the Town Zoning Ordinance and the Waterstone Master Plan at the time any Special Use Permit application is submitted, the terms of the Waterstone Master Plan shall control. The requirements of section 2.17(e) of the Town Zoning Ordinance shall be addressed in detail for each specific Parcel shown on the Waterstone Master Plan at the time a Special Use Permit Application for each Parcel is submitted to the Town for approval.
5. Public Water and Sewer. Town public water and sewer service shall be extended to the Waterstone development by the developer pursuant to the terms and conditions of the Water and Sewer Extension and Capacity Reservation and Right-of-Way Acquisition Agreement dated March 8, 2004 by and between the Town and the developer (the "Water and Sewer Agreement"). All property subject to the Waterstone Master Plan shall be served by public water and sewer service in accordance with the terms of the Water and Sewer Agreement. Upon termination of the Water and Sewer Agreement or upon termination of the vested right established by the approval of the Waterstone Master Plan, the Town shall automatically be released from any and all obligation arising thereunder to reserve water and sewer capacity for the undeveloped portion(s) of the property subject to the Waterstone Master Plan.

6. Roads and Pedestrian Circulation. The following roads and pedestrian walkways, as shown on Exhibit A (Land Use Plan) and Exhibit B (Pedestrian Circulation Plan) of the Waterstone Master Plan shall be constructed by the developer as part of the Waterstone development in accordance with the design details shown on Exhibit C (Roadway Cross-Sections) of the Waterstone Master Plan and the construction sequencing shown on Exhibits D, D-1, D-2, and D-3 (the “Construction Phasing”) of the Waterstone Master Plan.
- a. Waterstone Drive (runs east-west through the southern portion of Waterstone). This road will be constructed as a four-lane divided median road with curb and gutter, including bike lanes and meandering sidewalks on both sides of the road. The developer shall be permitted to install landscaping within this public right-of-way. This street will be dedicated to the Town upon completion of its construction. The developer, or, in its sole discretion, a property owner and/or tenant’s association to be established by the developer, will retain responsibility for the maintenance of all landscaping located within the public right-of-way in accordance with the terms of an encroachment agreement to be negotiated between the Town and the developer prior to the date on which construction is completed, and the applicable ordinances of the Town in effect on the date of dedication.
 - b. Cates Creek Parkway (runs northeast through the northern portion of Waterstone). A two-lane road with curb and gutter, including a sidewalk on the southeast side of the road, will be constructed. The proposed Linear Park parcel and associated greenway trail will provide additional pedestrian access along the northwestern side of this road. The developer shall be permitted to install landscaping within this public right-of-way. This road will be dedicated to the Town upon completion of construction. The developer, or, in its sole discretion, a property owner and/or tenant’s association to be established by the developer, will retain responsibility for the maintenance of all landscaping located within the public right-of-way in accordance with the terms of an encroachment agreement to be negotiated between the Town and the developer prior to the date on which construction is completed, and the applicable ordinances of the Town in effect on the date of dedication. The opening of the intersection of Cates Creek Parkway and the “Beckett’s Ridge Drive Extension” (the as of yet unnamed extension connecting Beckett’s Ridge and Old Mill Phase III) shall not occur until authorized by the Town Board. The opening of Cates Creek Parkway to through traffic on the north side of the Waterstone site shall not occur until authorized by the Town Board.
 - c. Northern Entry Road and North-South Spine Road (yet to be named). A two-lane road with curb and gutter, including a sidewalk on the southwestern side of the road and a greenway trail on the eastern side of the road between Cates Creek Parkway and Waterstone Drive, will be constructed. The developer shall be permitted to install landscaping within this public right-of-way. This road will be dedicated to the Town upon completion of construction. The developer, or, in its sole discretion, a property owner and/or tenant’s association to be established by the developer, will retain responsibility for the maintenance of all landscaping

located within the public right-of-way in accordance with the terms of an encroachment agreement to be negotiated between the Town and the developer prior to the date on which construction is completed, and the applicable ordinances of the Town in effect on the date of dedication.

- d. Retail Road A two lane road, with curb and gutter, including a sidewalk on the west side of the road, will be constructed. This road will be dedicated to the Town upon completion of construction and will provide access to expanded Parcel 15, Parcel 17 and to the adjoining Terry tract to the east. This road shall align with the proposed eastern entrance drive for the UNCH Hospital – Hillsborough as shown on the hospital Conceptual Build out Site Plan dated February 15, 2009.

Construction of the foregoing roads shall be permitted without a Special Use Permit. Provided, however, final pavement dimensions and cross-sections, right-of-way alignments, sidewalk cross-sections and alignments and landscaping details will be determined as part of the construction plan review process. In addition, all roads constructed on property subject to the Waterstone Master Plan which are not subject to the jurisdiction of the North Carolina Department of Transportation (“NCDOT”), shall be constructed with sidewalks and curb and gutter and shall conform to the other applicable standards required by the Town Code at the time they are constructed. On all roads in the residential use parcels identified on the Waterstone Master Plan, the Developer or its successors or assigns shall be prepared to address in the Special Use Permit process, among other issues, whether and how the proposed roads shall accommodate on-street parking. The roads which are not subject to NCDOT jurisdiction shall be dedicated to the Town upon completion.

7. SR1009 Intersection Improvements. Intersection improvements to SR 1009 (also known as South Churton Street or Old North Carolina Highway 86) and NC 86 in the entrance locations to the Waterstone project as depicted on the Waterstone Master Plan require the approval of the North Carolina Department of Transportation (“NCDOT”). The developer shall seek approval for these highway improvements from NCDOT. At the same time plans are submitted to NCDOT for approval of these improvements, the developer shall submit copies of such plans to the Town. All work required of the developer by NCDOT shall be completed before any Certificates of Occupancy are issued for any Parcels located in Phase III of the Waterstone Master Plan. Any improvements to be constructed by NCDOT in support of the developer’s improvements shall not affect the issuance of certificates of occupancy by the Town for development within the Waterstone Master Plan.
8. Stormwater Facilities. All detention ponds or other storm water control devices to be located on property subject to the Waterstone Master Plan shall be reviewed and approved by the Town prior to construction, but shall remain the property and maintenance responsibility of the developer or, in its sole discretion, a property owner and/or tenants’ association to be established by the developer.

9. Off-Site Sanitary Sewer Facilities. Notwithstanding anything to the contrary in Paragraph 1-8 above, and subject to the Water and Sewer Agreement, the design, installation, and construction of infrastructure as shown in Exhibit E (Off-Site Sanitary Sewer Facilities Map) shall be permitted without a Special Use Permit. Provided, however, construction of the Off-Site Sanitary Sewer Facilities shall be subject to approval of construction plans by the Town Engineers before any work begins. Timing and sequencing of the infrastructure construction shall occur pursuant to the Phasing Plan outlined in Exhibit D (Construction Phasing Plan), Exhibit D-1 (Construction, Phase I), Exhibit D-2 (Construction, Phase II), and Exhibit D-3 (Construction, Phase III) of the Waterstone Master Plan and the Water and Sewer Agreement.
10. Community Park Design and Construction. The developer shall design Phases I and II and construct Phase I of an active recreation park on Parcel 5 as shown on the Waterstone Master Plan, which will be dedicated to the Town no later than December 31, 2008 (the "Community Park"). The developer agrees to spend at least \$325,000.00 on the design, development, and completion of Phase I of the Community Park, which shall include construction of one (1) children's play ground and one (1) soccer field. Final design details and specifications of Phase I of the Community Park, including the children's play ground and soccer field, will be determined as part of the Town's consideration and approval of a Special Use Permit for the development of Parcel 5.

The developer's design and construction of Phase I of the Community Park shall fulfill all of the recreational obligations imposed by the Town's Zoning Ordinance or other applicable law for all of the residential development located on all of the Parcels identified in the Waterstone Master Plan. Notwithstanding the foregoing, the developer, its successors and/or assigns shall address during the Special Use Permit process, the issue of whether one or more "tot lots" or similar features should be included in the residential parcels as shown on the Waterstone Master Plan, and if required by the Town, up to two (2) "tot lots" or similar features will be incorporated in the Master Plan during the Special Use Permit process for the residential parcels.

11. Voluntary Annual Contributions. The voluntary annual contribution schedule attached hereto and incorporated herein as Exhibit F is for illustrative purposes only. As detailed more fully below, the voluntary annual contributions are intended to offset the impacts of the Waterstone development as shown on the approved Waterstone Master Plan.

Water Tower. The developer shall convey to the Town an area of up to one acre at a location on Parcel 22 of the Waterstone Master Plan to be determined by the Town and the developer before any permit is issued for Parcel 22. The deed for such parcel shall be in a form acceptable to the Town.

In addition, five (5) annual contributions totaling \$500,000.00 shall be made to the Town to defray the construction costs of a water storage facility which will be located on Parcel 22 as shown on the Waterstone Master Plan. The initial contribution of \$100,000.00 shall be made between June 1 and June 30, 2008. Thereafter, equal contributions of \$100,000.00 each shall be made annually on the anniversary date of the initial

contribution until the total voluntary contribution to the Town of \$500,000.00 has been made.

To secure payment of the voluntary cash contributions listed above, the developer will provide an irrevocable letter of credit issued by a financial institution acceptable to the Town and in a form acceptable to the Town in the amount of \$400,000.00 to the Town at the same time that it makes the initial \$100,000.00 payment. The amount of this letter of credit shall be reduced in an amount equal to each subsequent contribution made by the developer to fund construction of the Water Tower within thirty (30) days after each such contribution is received by the Town.

Police Capital Contribution. The developer shall convey to the Town in fee simple Parcel 20 as identified on the Waterstone Master Plan. The deed for Parcel 20 shall be delivered in a form acceptable to the Town prior to commencement of improvements on any Parcel located within Phase II of the Waterstone Master Plan.

Three (3) annual contributions totaling \$105,000.00 shall be made to the Town to defray the cost of providing police services to the Waterstone Property. The developer shall make an initial contribution of \$35,000.00 between June 1 and June 30, 2007. Thereafter, contribution shall be made on the anniversary date of the initial contribution for a total voluntary contribution of \$105,000.00.

To secure payment of the voluntary contributions listed above, the developer will provide an irrevocable letter of credit issued by a financial institution acceptable to the Town and in a form acceptable to the Town in the amount of \$70,000.00 to the Town simultaneously with the initial \$35,000.00 payment. The amount of this letter of credit shall be reduced in an amount equal to each contribution made by the developer within thirty (30) days after each contribution is received by the Town.

Fire Capital Contribution. Six (6) annual contributions totaling \$600,000.00 shall be made to the Town to defray the cost of providing fire protection and rescue services to the property subject to the Waterstone Master Plan. The developer shall make an initial contribution of \$100,000.00 between June 1 and June 30, 2007. Thereafter, contributions of \$100,000.00 shall be made annually on the anniversary date of the initial contribution for a total voluntary contribution of \$600,000.00.

To secure payment of the voluntary contributions listed above, the developer will provide an irrevocable letter of credit issued by a financial institution acceptable to the Town and in a form acceptable to the Town in the amount of \$500,000.00 to the Town simultaneously with the initial \$100,000.00 payment. The amount of this letter of credit shall be reduced in an amount equal to each contribution made by the developer within thirty (30) days after each contribution is received by the Town.

12. **Best Management Practices for Sanitary Sewer Installation.** The developer shall consult with the Town during the design and planning stages, as well as during the construction, of the sanitary sewer facilities to address best management practices as defined by the North Carolina Wildlife Resources Commission (Guidance Memorandum to Address and

Mitigate Secondary and Cumulative Impacts to Aquatic and Terrestrial Wildlife Resources and Water Quality (August 2002)), are incorporated to the maximum extent practicable.

13. Assignment of Rights and Obligations. The developer shall be entitled to assign the rights and obligations contained in the Waterstone Master Plan and these Conditions of Approval to subsequent purchasers of any portion of the property subject to the Waterstone Master Plan, provided that any subsequent purchasers must acknowledge in writing to the Town that they have taken the property, or any portion thereof, subject to the obligations and conditions stated in the Waterstone Master Plan and these Conditions of Approval and that they agree to be bound by them.
14. Trading Path. Information available to the Town and the developer on the date of approval of the Waterstone Master Plan indicates that remnants of an old road linking the Town with the Town of Chapel Hill traverses a portion of the Property. During development of the infrastructure plans and prior to the submission of the first Special Use Permit for any Parcel within the Waterstone Master Plan, the developer shall locate the roadbed located on the property subject to the Waterstone Master Plan by field survey and shall create a video tape record of the current condition of that portion of the roadbed. The developer, its successors and/or assigns, shall also consider the possible preservation of remaining portions of the old roadbed on those Parcels subject to Waterstone Master Plan where it is identified, during the Special Use permit process for such parcel(s).
15. Park and Ride. The developer shall address in its application for a Special Use Permit for each of the non-residential Parcels shown on the Waterstone Master Plan the suitability of each such Parcel as a location for a “park and ride” facility.
16. Restrictive Covenants. Prior to recording any restrictive covenant or any other document intended to affect development on any portion of the property subject to the Waterstone Master Plan (the “Restrictive Covenants”), the developer or any other subsequent owner of any portion of the property subject to the Waterstone Master Plan shall first submit the Restrictive Covenants to the Town for review.
17. Mixed Use Parcels. The Town expects that the various parcels identified on the Waterstone Master Plan as designated for “mixed use” will incorporate and include at least some residential elements.
18. These Conditions of Approval shall supercede the terms of the Waterstone Master Plan Application to the extent these Conditions of Approval are inconsistent with the terms of the Waterstone Master Plan Application.